

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 8047 OF 2005

State of Maharashtra

...Applicant.

V/s

Arun Gulab Gawali

...Respondent.

Mr. S.R. Borulkar Chief P.P. for the applicant.

Mr. A.P. Mundargi with Mr. Ganesh Gole for the respondent.

CORAM: V.M. KANADE, J.

DATE: 21st February, 2006

P.C.:

1. This is an application filed by the State, challenging the judgment and order passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Bombay dated 3/12/2005 whereby he was pleased to grant an order of anticipatory bail in favour of the respondent.

2. Brief facts which are relevant for the purpose of deciding the present application are as under:-

3. One Mohammad Qureshi and Rajendra Doshi had some dispute in respect of the financial dealings relating to Hotel Pritam International in which both had an equal share. The dispute was not resolved for a

period of two years. It is alleged that Qureshi

received telephone call on 15/3/2002 on his mobile

and he was abused and threatened and he was asked to report to Dagdi Chawl for the purpose of resolving the dispute in connection with the said hotel. Similarly, other partner Rajendra Doshi also received similar call and both of them went to the said place and finally the matter was resolved. Thereafter, it is alleged that out of the amount which was settled, the amount of Rs 15,00,000/- and Rs 3,00,000/- was extorted from the said Qureshi. The other partner

Shri Doshi also received threatening calls. Shri

Qureshi, thereafter, went and registered offence at the Agripada Police Station vide C.R. No. 241 of 2005 for the offence punishable under section 384, 386, 506(II) read with section 129(B), 34 of the Indian Penal Code. In view of the complaint which was filed, the application for anticipatory bail was filed by the respondent. The said application was opposed by the Investigating Officer and, finally, the Sessions Court granted anticipatory bail to respondent by order dated 3/12/2005.

4. The learned Chief Public Prosecutor Shri Borulkar, appearing on behalf of the State, strenuously urged that the Sessions Court had not taken into

consideration the material which was produced by the State on the merits of the case and had decided the matter on certain material which was not germane to the main issue which was involved in the said application. He invited my attention to the impugned order passed by the Sessions Court. He submitted that the Sessions Court had not taken into consideration the material which was filed by the State in affidavit-in-reply to the anticipatory bail application and, on the contrary, had recorded a finding that the State had not argued the application on merits. The learned Chief P.P. submitted that the Sessions Court was mainly irked by non-attendance of the complainant and the other witnesses and proceeded to draw an adverse inference on account of their non-attendance. He submitted that the attendance or non-attendance of the complainant and the witnesses was not required at the stage of hearing of the anticipatory bail application. He submitted that the Sessions Court was required to consider whether there was a prima facie material available on record to proceed against the accused. He submitted that instead of considering this material on merits, the trial court had relied upon certain other aspects such as non-attendance of the complainant and other witnesses. He relied upon the judgment of the Supreme

Court in the cases of Muraleedharan vs. State of Kerala reported in **AIR 2001 SC 1699**, Puran vs. Rambilas and another reported in **AIR 2001 SC 2023** and State of U.P. through CBI Vs. Amarmani Tripathi reported in **(2005) 8 SCC 21** in support of his submissions.

5. The learned Counsel appearing on behalf of the respondent, on the other hand, submitted that the learned Chief Public Prosecutor has not invited my attention to the submissions which were made by the applicant before the Sessions Court. He submitted that it was the case of the applicant that his name was being involved and implicated on account of political rivalry. He submitted that since the applicant had contested the assembly election and as a result of his taking part in the assembly elections, one of the candidates of the ruling party was defeated, the ruling party bore a grudge against the applicant and they were trying to implicate him by hook or crook. He submitted that on the earlier occasion also false case had been filed against the applicant and the complainant in the said case has exonerated him and has stated that he was not involved in the said case. He submitted that the name of the applicant in the FIR was clearly added as an

afterthought and it was visible to the naked eye as the said addition, obviously, had been subsequently made. He submitted that, even otherwise, from the averments which are made in the complaint, there was no reference to the applicant and there was no material to show that either the applicant had accepted the money from the complainant or that he had taken any active part in the entire transaction. The learned Counsel for the applicant relied upon the judgment in the case of Sanjay Gandhi and Amarmani Tripathi decided by the Supreme Court. He submitted that, in the present case, there is nothing to show that there was tampering of the evidence as was held in the case of Sanjay Gandhi (supra). He submitted that therefore even otherwise this is not a fit case for cancellation of the bail as the applicant has not misused the liberty after he was granted an anticipatory bail.

6. I have heard the learned Chief Public Prosecutor appearing on behalf of the State and the learned Counsel appearing on behalf of the applicant at length. I have given by anxious consideration to the submissions which are made by the learned Counsel on the either side. In the present case, on perusal of the impugned order, it appears that the Sessions Court has come to the conclusion that the prosecution has

not submitted its arguments on merits. The affidavit-in-reply filed by the State to the application for anticipatory bail discloses that there is some material which has been brought on record in the said affidavit-in-reply. However, in the impugned order, there is no reference to the said material which is brought on record and no finding has been recorded by the Sessions Court on the said aspect.

7. Apart from that, it appears that some controversy was raised in the trial court about bringing the complainant and the other witnesses in the Court on the date of the hearing of the anticipatory bail application. The record does disclose that no order was passed by the learned Judge directing the complainant and other witnesses to remain present and the order indicates that the Investigating Officer had agreed to keep the complainant and the other witnesses present in the Court at 4.30 p.m. However, at 4.30 p.m., the Investigating Officer expressed his inability to keep the said witnesses present and expressed the intention of the State to challenge the order of the learned Sessions Judge. The learned Sessions Judge felt that no direction had been given by the Court to the Investigating Officer and in the application which was made challenging the order of

producing the witness in the Court, certain averments were made by the Investigating Officer. The Sessions Court issued show cause notice against the Investigating Officer seeking an explanation as to why proceedings under the Contempt of Courts Act should not be initiated against him. The said proceedings are still pending. In the meantime, the application which was filed by the Investigating Officer seeking transfer of the case from the said Court to another Court was heard and rightly rejected by the Principal Judge.

8. Without going into the allegations and counter allegations which are made by both the parties against each other, from the perusal of the impugned order, it does appear that the Sessions Court has not addressed itself to the material which was sought to be brought on record by the State by filing affidavit-in-reply to the said application. Without going into the said submissions which are made by the learned Chief Public Prosecutor on the merits of the case and the submissions which are made by the learned Counsel appearing on behalf of the respondent, I am of the view that ends of justice will be met if the impugned order is set aside and an opportunity is given to both the parties to argue the matter again since no finding

has been recorded by the Sessions Court on certain aspects of the matter.

9. The Supreme Court in the case of Muraleedharan vs. State of Kerala reported in **AIR 2001 SC 1699** and in the case of Puran Vs. Rambilas and another reported in **AIR 2001 SC 2023** has in terms held that if an application is made for setting aside the order passed by the Sessions Court granting an anticipatory bail, the High Court, normally, should not interfere in the said order unless it is brought to its notice that the findings which are recorded are either patently perverse or are false without taking into consideration the material evidence which is on record. In the present case, in my view, though affidavit-in-reply was filed by the State bringing certain material on record, there appears to be no discussion on this aspect in the order which is passed by the trial court. Under these circumstances, I am of the view that the impugned order is liable to be set aside. I do not wish to express any opinion or make any observation either way on submissions which are made by the learned Counsel for the applicant - State and the learned Counsel for the respondent on merits or in respect of the findings which are recorded by the Sessions Judge. Further, I would like

to clarify that the setting aside the order passed by the sessions Court may not be construed to mean that the contentions raised by the applicant - State are accepted or that the contentions of the respondent are rejected in toto. All questions which are raised by both, the applicant - State and the respondent are kept open. In these circumstances, the impugned order is set aside. Considering the fact that a show cause notice was issued by the learned Sessions Judge and reply has been filed by the Investigating Officer in which certain averments are made in para 5, in the interest of justice, it would be just, fair and proper that the learned Sessions Judge who heard the earlier application should not hear the present application after it is filed. This direction should not be construed to mean that the submissions made by the Chief Public Prosecutor in respect of the application for transfer are accepted by this Court or that this Court feels that the order passed by the Principal Judge in rejecting the application for transfer by the State is incorrect or illegal. However, in the facts and circumstances of the case, I am of the view that it would be just, fair and proper if the said application is heard by another Sessions Judge as assigned by the Principal Judge. The Sessions Court to decide the application on its own merits without

:10:

being influenced by any observation made by this Court while deciding the present application. The interim order granted by the trial court in favour of the respondent to continue pending the hearing and final disposal of the application for anticipatory bail.

11. Application is disposed of in the above terms.

(V.M. KANADE, J.)